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No. 2000-

In The Supreme Court of the United States
OCTOBER TERM, 2000

SAL HASKOURI
Petitioner,

vs.

UNIVERSITY OF TEXAS AT BROWNSVILLE
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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December 21, 2000

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QUESTIONS PRESENTED

1. Whether the lower federal courts improperly extended decisions of the highest Texas state court interpreting United States Supreme Court decisions of when limitations periods run in employment discrimination cases with respect to failure to hire facts as well as improperly extending the United States Supreme Court decisions themselves.

2. Whether the lower federal courts' restrictive view of limitations periods with respect to causes of action asserted in amended pleadings conflicts with decisions of the United States Supreme Court interpreting liberal federal pleading rules.

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UNIVERSITY OF TEXAS AT BROWNSVILLE
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REFERENCE TO OPINIONS

The opinion of the United States Court for the Southern District of Texas, dated January 6, 2000, (unreported) granted summary judgment against all of Petitioner's claims.

The opinion of the United States Court of Appeals for the Fifth Circuit, dated September 28, 2000 (unreported) affirmed, on limitations grounds, the district court's summary judgment.

JURISDICTION

The judgment of the court of appeals was entered on

September 28, 2000. This Court has jurisdiction pursuant to 28 U.S.C.§1254(1). The district court exercised jurisdiction pursuant to 28 U.S.C.§1331.

RULES/STATUTES/CONSTITUTIONS INVOLVED

Federal Rule of Civil Procedure 8(f) provides:

Construction of Pleading. All pleadings shall be so construed as to do substantial justice.

Federal Rule of Civil Procedure 15(c)(2) provides:

Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.

STATEMENT OF THE CASE

Petitioner is a Muslim, of Moroccan ancestry, who continually sought a full-time teaching position at the University of Texas at Brownsville beginning in 1993. After several years of not being given such position, on January 22 of 1996 Petitioner filed an EEOC complaint which led to a settlement offer which, if accepted, would have subjected Petitioner to conditions not imposed on other hirees similarly situated. In response, Petitioner rejected Respondent's settlement offer and after receiving an EEOC right to sue letter, filed this instant lawsuit in state court alleging discrimination

based on religion and national origin. Respondent removed the case to federal court and Petitioner eventually filed a second amended petition which removed language specifically referring to federal law. Thereafter Respondent filed a motion for summary judgment which was principally based on a limitations argument. The district court granted the summary judgment which was affirmed on a limitations basis on appeal to the Fifth Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

THE DECISIONS BELOW IMPROPERLY EXTEND TO FAILURE TO HIRE SITUATIONS, DECISIONS OF THE TEXAS SUPREME COURT, DECISIONS OF OTHER FEDERAL APPEALS COURTS, AND THE DECISIONS OF THE UNITED STATES SUPREME COURT WHICH HAVE CONSIDERED THE ISSUE OF LIMITATIONS PERIODS IN EMPLOYMENT DISCRIMINATION CASES.

1. The petition should be granted because the Fifth Circuit Court of Appeal's opinion improperly extends both the Texas Supreme Court's view of United States Supreme Court precedent of when employment discrimination lawsuits may be brought as well as improperly extending the said United States Supreme Court decisions themselves. In this instant lawsuit, the Fifth Circuit Court of Appeal's decision holds, in effect, that once any discriminatory denial of employment takes place that relevant statute of limitations periods begin to run with respect to later similar but distinct, acts of discrimination. The lower courts' decisions apply the accepted legal

principle that limitations periods begin to run in employment discrimination cases when an employee first has notice of a discriminatory employment practise, to non-employees who make repeated job applications. While it is true that Petitioner was first denied employment in 1993 (which Petitioner alleges was because of national origin and religion) it is equally true that Petitioner continued to seek employment with Respondent until January 11, 1996 which is when Petitioner filed an EEOC complaint. It is Petitioner's belief that if Petitioner had been an employee and had been refused promotions that some circuit courts of appeals' precedent and some United States Supreme Court precedent would support the decision in this case. However, Petitioner was not an employee and extension of such precedent to his situation would be improper. It is to be observed that the EEOC complaint which Petitioner filed, alleged the same facts as were later asserted in this instant lawsuit. The EEOC complaint was not dismissed as untimely, notwithstanding the reality that such EEOC complaint was based upon precisely the same factual allegations contained in Petitioner's lawsuit filed April 3, 1997, and which resulted in Petitioner's receiving a right to sue letter. The Fifth Circuit opinion, in essence, gives employers a license to forever deny employment on a discriminatory basis so long as one such non-hiring violation has gone unaddressed in a court of law for at least two years. The Texas

Supreme Court, relying on United States Supreme Court precedent, has recognized that discrimination lawsuits must be brought within two years of a discriminatory act. See, *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 492 (Tex. 1996). The United States Supreme Court has, indeed, so held. See, *Bazemore v. Friday*, 478 U.S. 385 (1996). The collateral observation should also be made that since Petitioner's EEOC complaint was timely filed January 22, 1996, that meant that those discriminatory hiring acts complained of there could not have been, at such time, more than 180 days old, meaning that the non-hiring acts alleged to have been discriminatory must have been alleged to have occurred *after* July, 1995. What that signifies is that if a two year statute of limitations period indeed applied, Petitioner would only have been required to bring lawsuit within two years of July, 1995. As the court of appeal's opinion shows, Petitioner sued on April 3, 1997, that is, several months *before* Petitioner was required to do so. Accordingly, the decision below is inconsistent with the facts appearing in the opinion itself.

The writ should be granted, in part, because, at best, it must be said there is no clear precedent concerning continuing acts of discrimination perpetrated against a non-employee as opposed to the many cases which have dealt with repetitive discrimination perpetrated against employees. This court should create a clear

precedent that repetitive discrimination in denying employment is different than repetitive, continuous discrimination against actual employees and that each denial of employment is an independent, actionable event with its own statute of limitations period.

2. The petition should be granted because, to the extent, if any, that the summary judgment and court of appeal's decision upholding same, were based on discrimination claims arising solely under state law, such decision, in light of the broad discrimination complaints set out in paragraphs 4 and 5 of Petitioner's second amended original complaint, ignores the liberal pleading theory of the federal civil rules (FRCP 8(f) and FRCP 15(c)(2)) and conflicts with decisions of the United Sates Supreme Court decisions such as *Maty v. Grasselli Chemical Company*, 303 U.S. 197, p. 200-01 (1937). Petitioner clearly had viable Title VII claims assertable in court but which were never addressed by the trial court or by the court of appeals.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DENIS A. DOWNEY
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Attorney for Petitioner

December 20, 2000

APPENDIX

(Filed January 06, 2000)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

SAL HASKOURI,	§	
Plaintiff,	§	
	§	
v	§	CIVIL ACTION NO. B-97-113
	§	
UNIVERSITY OF TEXAS,	§	
AT BROWNSVILLE	§	
Defendant.	§	

FINAL JUDGMENT

BE IT REMEMBERED that on January 6, 2000, the Court having GRANTED Defendant's motion for summary judgment (Dkt. No. 32), the Court ORDERED Plaintiff take nothing from Defendant and all claims against Defendant are DISMISSED with prejudice.

DONE at Brownsville, Texas this 6th day of January 2000.

/s/ Hilda G. Tagle
United States District Judge

(Filed August 05, 1999)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

SAL HASKOURI

VS. **CIVIL ACTION NO. B-97-113**

THE UNIVERSITY OF TEXAS
AT BROWNSVILLE

PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT (PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION IF IN STATE COURT)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Plaintiff, **SAL HASKOURI**, complaining of the **University of Texas at Brownsville**, and for cause of action would show unto the Court as follows:

1. Plaintiff is a resident of Cameron County, Texas.

2. Defendant, the **University of Texas at Brownsville** (hereinafter called **UTB**) is a governmental unit, state agency and an institution of higher education whose status and authority are derived from the Constitution of Texas or from laws passed by the legislature under the said Constitution of Texas and is located in Cameron County, Texas; said UTB has already been served with citation and entered its appearance for all purposes.

UTB is an entity within the University of Texas system.

VENUE AND JURISDICTION

3. Pursuant to Section 554.007 of the Texas Government Code, venue for Plaintiff's cause of action under Section 554.003 of the said Texas Government Code is proper in a District Court of the County in which Plaintiff resides, to wit: Cameron County, Texas; further, all or part of the causes of action occurred in Cameron County, Texas; further under Section 15.061 of the Texas Civil Practice and Remedies Code venue is proper as to Defendant in Cameron County, Texas; also, the amount of damages occasioned Plaintiff exceeds the minimum jurisdictional limits of this Court.

Plaintiff's Texas state district court lawsuit herein was removed from the 138th District Court of Cameron County, Texas to this Honorable Court by action of the Defendant.

Facts

4. Plaintiff asserts:

a. He is an American citizen of Moroccan ancestry and of Muslim faith.

b. His complaint against Defendant herein is based on the fact that he, while qualified, available and willing to serve the Defendant in the capacity as a math instructor as he did in the Fall of 1992, Defendant has consistently, since his initial hiring denied

him the opportunity to teach mathematics at **UTB** and Defendant has, instead, hired less qualified or unqualified personnel for the teaching position he sought.

CAUSE OF ACTION

5. Plaintiff alleges that **UTB**, its agents and employees who passed on the decision to deny him the opportunity to teach mathematics at the institution, acted in bad faith, arbitrarily and intentionally based on the fact that Plaintiff was of Moroccan ancestry and of Muslim faith.

6. The action of **UTB**, its agents and employees complained of by Plaintiff are violative of the equal Rights Amendment to the Texas constitution, Article I, §3a, which in its entirety, states:

> Equality under the law should not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

7. In taking the aforesaid actions Defendants deprived Plaintiff of equality under the law because of his race, creed and/or national origin, thereby violating the Texas Constitution.

8. As a result of the aforesaid unlawful acts, Plaintiff suffered humiliation, embarrassment, mental and emotional distress, and anguish, loss of self esteem and harm to his personal reputation.

9. The aforesaid unlawful acts of Defendants were done willfully and maliciously and with reckless disregard of Plaintiff's rights under the Texas Constitution.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for equitable relief in the following respect:

1. That **UTB** be ordered to interview Plaintiff for the position of math instructor which he has sought and which he has been denied;

2. That **UTB** be ordered to hire Plaintiff for the position of math instructor, if, after he has been interviewed he shows himself to be more competent and qualified to discharge the duties of that position than any other instructor which the Defendant may have in its employ at the time of Plaintiff's interview;

3. That Defendants be ordered to pay the costs of court incurred and reasonable attorney's fees.

4. That Plaintiff be granted such other relief to which he may be entitled.

Respectfully submitted,
/s/ Jose Antonio Gomez
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S.B.N. 08115300

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Plaintiff's Second Amended Original Complaint was hand delivered to Mr. David Morales, Assistant Attorney General on the 9th day of July, 1999.

/s/ Jose Antonio Gomez

CERTIFICATE OF CONFERENCE

I conferred with Mr. David Morales, Assistant Attorney General, about the amended Complaint and he opposed the same.

/s/ Jose Antonio Gomez

(Filed September 28, 2000)

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 00-40257
SUMMARY CALENDAR

SAL HASKOURI,
Plaintiff-Appellant,

VERSUS

UNIVERSITY OF TEXAS AT BROWNSVILLE,
Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(B-97-113)

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:[1]

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[1]Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4

Appellant Sal Haskouri petitions for review for summary

judgment in favor of Appellee University of Texas at Brownsville (UTB). Haskouri, a naturalized American citizen of Moroccan ancestry and Muslim faith, was hired by UTB as a part-time math instructor from August 31, 1992 to December 19, 1992. Thereafter, Haskouri applied for a similar position, but UTB declined to rehire him.

On January 22, 1996, Haskouri filed a discrimination claim with the Equal Employment Opportunity Commission (EEOC), alleging UTB's decision not to hire him was based upon his national origin. In response, UTB offered to reappoint Haskouri to a part-time position and required that he be subject to performance evaluations and visits by the Dean. Haskouri refused.

On April 3, 1997, Haskouri filed suit in the 138th District Court of Cameron County, Texas. His suit was removed to federal court on May 19, 1997. After Haskouri twice amended his complaint, UTB filed for summary judgment on three grounds: (1) Haskouri's earlier volunteer waiver of reappointment barred him from recovering the same relief in this forum, (2) Haskouri's claim for reappointment was barred under the Texas Constitution by the statute of limitations, and (3) Haskouri's claim for attorneys' fees and costs are not available under the Texas Constitution. On January 2, 2000, the district court granted UTB's motion and entered judgment in its favor. Haskouri, while conceding the claim for attorneys' fees,

now appeals the summary judgment.

There is a two-year statute of limitations applicable to Texas Constitutional claims. See Jackson v. Houston Indep. Sch. Dist., 994 S.W.2d 396, 402 (Tex. Ct. App. 1999). While a cause of action may accrue when a wrongful act causes injury, the discovery rule defers accrual of the cause of action until the Plaintiff knew, or by exercising reasonable diligence, should have known of the facts giving rise to the cause of action. Li v. University of Texas Health Science Ctr., 984 S.W.2d 647, 651 (Tex. Ct. App. 1998).

We conclude that Haskouri's claims are barred by the statute of limitations. Haskouri's original complaint was filed on January 22, 1996. Haskouri had notice of potential discrimination claim in 1993, when UTB refused to rehire him. This Court is without jurisdiction to consider Haskouri's claim that the 1996 reappointment offer was also discriminatory because it was not addressed by the district court had is alleged for the first time on appeal. See, e.g., Capps v. Humble Oil & Refining Co., 536 F.2d 80, 81 (5th Cir. 1976)); Poston v. Carake, 378 F.2d 439, 442-43 (5th Cir. 1967). Because we find the statute of limitations bars Haskouri's claim, we do not reach the issue of waiver.

Accordingly, we AFFIRM the order of the district court.